



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 16, 1998

Mr. W. Daniel Vaughn
McLeod, Alexander, Powel & Apffel
P.O. Box 629
Galveston, Texas 77553

OR98-2695

Dear Mr. Vaughn:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118911.

The Park Board of Trustees of the City of Galveston received a request for "[a]ll detailed billing records presented to the park board by the law firm McLeod, Alexander, Powel & Apffel for the period January 1, 1997 through July 20, 1998." You assert that portions of the requested fee bills are excepted from required public disclosure based on sections 552.103, 552.107(1) and 552.111 of the Government Code.

Section 552.107(1) of the Government Code states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 at 5 (1990). To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 at 5 (1990); 462 at 13-14 (1987).

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 at 5 (1990). Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may only withhold information about the details of the substance of communications between the attorney and the client.

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). Consequently, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. *See* Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See id.*

You have submitted the requested fee bills and marked small portions of the bills as within section 552.107(1). We have reviewed your arguments and the bills. We conclude that the information is not excepted from disclosure based on section 552.107(1) of the Government Code.

You also assert that sections 552.103 and 552.111 except portions of the fee bills from disclosure. However, as you raised these exceptions after the ten-day deadline for raising exceptions, these exceptions are waived. Gov't Code § 552.301; *see* Open Records Decision Nos. 515 (1988); 473 (1987).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/mjc

Ref.: ID# 118911

Enclosures: Submitted documents

cc: Mr. Marty Schladen
Reporter
Galveston Daily News
P.O. Box 628
Galveston, Texas 77553
(w/o enclosures)